IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2008 OF 2004

IN

SUIT NO.1849 OF 2004

Smt.Smita Sharad Shirsekar. .... Plaintiff.

vs.

1.Shir.S.D.Damle & others. ... Defendants.

Ms.Pallavi V. Ghalsashi i/b. Ms.Nutan Moily, for Plaintiff.

Mr.K.B.Gaikwad, for Defendant no.1.

Mr. Ramesh Dube Patil i/b. Ajay Misar & Co. for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 6th May,2005

P.C.:-

1. This is a notice of motion taken out by Plaintiff. The plaintiff has filed the suit challenging auction which according to the plaintiff was conducted by defendant no.1 on 27.4.2002, of the building which was owned

by the plaintiff. According to the plaintiff, the plaintiff did not pay property tax and therefore, Bombay Municipal Corporation auctioned the building. What is interesting is that though the building was auctioned by the Corporation, the Corporation has not been joined as a party to the suit. The officer of the Corporation by name has been joined as defendant no.1. Now the suit as against the Corporation which is a statutory body may be barred by Law of Limitation. It appears from record that the auction was held on 27.7.2001 and the present suit has been filed in July,2004. I have been informed that at the auction the property was purchased by the Society of tenants who were occupying that building.

2. By this Notice of Motion, temporary injunction is sought restraining the auction purchaser for carrying out any repairs or construction in the suit property. As the auctioned property has been purchased by the Society of tenants who were occupying the building, they cannot be prevented from repairing the building. However, as the suit is pending the purchaser cannot be permitted to carry out any additional construction or to alter the structure of the suit property. The notice of motion is therefore, disposed of with directions to defendant no.2 to carry out repairs to the suit building but not to effect any structural changes in the building.

Notice of Motion disposed of.